



**Office of
Ombudsman for
Long-Term Care**

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Senate Judiciary Committee
Subcommittee on Administrative Oversight and the Courts
Dirksen 226

Statement of Deb Holtz, J.D.
State Ombudsman for Long-Term Care, Minnesota
A service of the Minnesota Board on Aging

Good afternoon Madam Chair and members of the subcommittee.

Thank you for this honor to represent the experiences and concerns of the Ombudsman Office. Most of the people we represent live in nursing facilities and other settings, including their own homes with home care. They are typically much more vulnerable than the average senior, and rely on our office to represent their concerns. They are often unable to travel, and ask that we tell their stories.

The Minnesota Office of Ombudsman for Long-Term Care has a broad federal mandate to enhance the quality of life and quality of services for long-term care consumers through advocacy, education, and empowerment.

The Long-Term Care Ombudsman Program was established in 1978 through the Federal Older Americans Act – mandating that states establish ombudsman programs that advocate for people living in nursing homes and board and care homes. In 1989 Minnesota expanded the ombudsman service also to consumers of home care services. MN is only one of twelve Long-Term Care Ombudsman programs nationally that serve in this expanded role, supported through the addition of state funding with the Older Americans Act funding.

(MN needs to acknowledge and thank Senator Franken who is currently advancing legislation which would expand ombudsman services to consumers receiving home care and ensuring that home care clients have a bill of rights, based on MN's bill of rights.)

Ombudsmen investigate complaints, meet personally with customers who have issues with their long-term care services, work to resolve individual concerns, and identify problems and advocate for changes to address them. Ombudsmen promote self-advocacy and the development of problem-solving skills through education and training for consumers, their families and caregivers, providers and the community.

We currently serve:

All veterans in the Minnesota state veterans' homes – over 800 veterans
32,982 active beds in nursing homes
1246 active beds in board and care homes
28,100 people receiving home care
59,000 tenants in housing with services settings
749,000 Medicare beneficiaries who seek assistance with concerns re hospital access, denial of inpatient or outpatient services, or discharge questions/concerns.

Last year over 21,000 people were personally visited by our staff and volunteers. In addition to the almost 2500 complaints we responded to last year, were the systemic issues we addressed. One of those systemic issues was, and continues to be, guardianship and conservatorship.

In 2009, our office, along with three other advocacy offices and constituents, moved legislation that reformed our state guardianship laws.

We are very supportive of Senator Klobuchar's action to now take on this issue at the federal level.

Pilot projects to conduct background checks and improve the handling of proceedings – and the adoption of information technology are embraced by Minnesota, and will hopefully address some of the issues our office continues to see.

Several recent examples from our office point to the need for ongoing improvement to this system and to the fact that the court system needs the support and resources to act in a timely manner. Courts lack adequate funding to develop monitoring systems and enforce the fiduciary standards. We are excited to see the possibility of pilot projects to review these issues, and develop increased efficiencies.

We see too many cases where the court review is not completed in a timely manner, using precious funding from the ward's estate to pay attorneys and simply encouraging families to avoid resolution.

Our office is currently assisting an elderly woman, who is under professional guardianship. Family members are in disagreement over who gets to visit on which days. The guardian's response has been to move the client from an independent living environment to a secured Dementia unit. It took a month to get a court date to review visits. Once in court, the judge continued the case while experts were brought in. The lawyers did not accept the experts' opinion so the case was continued once again. In the meantime our office was asked to mediate a visitation agreement between the families. A visitation agreement was made, with everyone agreeing to it except for one attorney. This attorney objected because informal mediation was used rather than formal mediation. This whole process started in March with the client being moved and there is still no final decision. In the meantime the client has declined, first from the move and then from living in an environment without the stimulation she needs. The

professional guardian is one the courts have used before. The courts are there to protect this individual from her family, but who protects the client from the lengthy court process?

A second case points again to the timeliness and checks and balances needed in looking at who will be the best guardian for a person. Our office represented an elderly man who was in the first stages of dementia. He wanted visits from his wife (who happened to be his second wife). His daughter felt the wife upset her father when visits took place, so she pursued guardianship to restrict the visits from his wife. Daughter was granted guardianship and restricted visits from his wife. While the courts heard arguments from both sides, dad unfortunately slipped into more dementia, and finally did not understand why his wife would not visit him. A process that took much too long. This man slipped into the final stages of dementia, incredibly sad and confused that his wife was not visiting him. A post-script – in 2009 a group of advocates, including our office, changed MN law so that visit restrictions must now be based on a showing of harm that would occur, rather than the “best interest” standard – which used to be at the discretion of the guardian, and as can be seen in this case, at times arbitrary at best.

Senator Klobuchar’s language encouraging pilot projects to assess and improve the handling of proceedings gives much hope that we can simplify this process and return to the needs of the ward.

The bill also points to the widespread adoption of information technology.

Technology is being used in the Minnesota conservatorship program. CAMPERS (Conservator Account Monitoring Preparation and Electronic Reporting System) was developed and piloted in Ramsey County Probate Court as part of a Judicial Branch effort to improve Conservatorship oversight and reduce administrative costs. Use of the reporting system became mandatory state-wide effective January 1, 2011. The MN State Court Self Help Center provides an instructional manual and tutorials for setting up and filing reports.

The system is designed to flag aberrations in annual accounts, triggering an audit and closer inspection of supporting documentation. Periodic standardized audits are expected to curb fraudulent and inappropriate use of funds by conservators. If the conservator also serves as guardian of the person, the annual well being reports are also filed online.

We know from experience, unfortunately, that many people are being ill-served by their guardians and conservators.

We also know that many court systems simply lack the resources to effectively monitor this enormous system.

Pilot projects to enable states to assess and improve the handling of proceedings is an excellent beginning to a system that begs for reform. There are many alternatives to formal court proceedings, including mediation, health care directives, and powers of attorney, all which can be made before people lose the capacity to make decisions. The development of best standards through pilot projects will encourage states to provide people with more information in which better choices can be made.

We know that some choices are made because of people not wanting to lose that last connection with family – even if it is a grandson financially exploiting grandma by threatening not to visit anymore if she does not give him some money to help him for a bit. We know that choices are sometimes made because of vulnerable adults feeling too guilty to turn in their abusive daughter or sons.

People need a voice when they become vulnerable at certain points and rely on a system that should be protecting them, not exploiting them, or abusing them by becoming lost in a sea of motions and continuances.

The ombudsman is one voice. We provide information so that people know what their rights are and how to stand up for them. We also provide eyes and ears for those who are in vulnerable situations. We speak for those who may not be able to.

It should be a given that we all age without any abuse, neglect, or financial exploitation and that our lives will continue to be filled with dignity.

Senator Klobuchar - Thank you for taking leadership to act on the guardianship and conservatorship problems that are affecting so many vulnerable adults today. We appreciate your commitment to these issues, and we look forward to working together with you.

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